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ABSTRACT

This chapter of "Principles of School Business Management" presents an overview of risk management for school districts. The chapter first discusses four fundamental elements of risk management: (1) identifying and measuring risks; (2) reducing or eliminating risks; (3) transferring unassumable risks; and (4) assuming remaining risks. The chapter next covers critical legal factors affecting the actions and decisions of risk managers, including state insurance codes and regulations and the insurance clauses in contracts. Appropriate qualifications for risk managers are reviewed. The chapter then considers the basics of insurance: government regulation, insurance contracts, rating bureaus, state licensing, brokers and agents, and district responsibilities. The purposes and essential features of loss control programs are examined next and data collection and job safety efforts are considered. The chapter then reviews the requirements of the Federal Occupational Safety and Health Act (OSHA). The remainder of the chapter describes specific types of insurance, including property, casualty or liability, automobile, self-insurance, and employee benefits (medical, dental, vision, disability, and life). Appendixes present a sample school district policy statement regarding risk, a generic set of rules and regulations for district risk management, a glossary of 91 terms, and descriptions of three types of damage awards. (PGD)

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Risk Management

L. Nathan Randal

Risk management has been an accepted part of corporate management for some years, especially in larger corporations. Even many small businesses have recently charged an administrator with the responsibility for managing the risks of doing business. In reality, this has often been little more than periodically shopping for insurance. However, it is not unusual to find fairly sophisticated insurance purchasers in relatively small companies.

Fundamentals of Risk Management

The goal of risk management is to minimize the risks of doing business and to do so at an acceptable cost. While a business which faces prohibitive costs of risk can decide to discontinue operations, schools usually cannot take such definitive action. Rather, they must continue to operate and manage risk and its attendant costs as best they can. In such situations, the risk management function can be vital to the financial well-being of the district. In a corporate situation, managers are responsible to the stockholders for the responsible management of company assets. Managers of school assets are responsible not only for management of those assets, but for how effectively those assets are used in the education process. This chapter will discuss risk management from the perspective of school business administration.

Before risk management responsibilities are discussed certain fundamental aspects of risk management must be addressed. The fundamentals of risk management may be broken down into four basic elements:

- Identification and measurement.
- Risk reduction or elimination.
- Transfer of risks incapable of assumption.
- Assumption of remaining risks.

Identification and Measurement

It is impossible to manage risks if they are not known. Thus, one of the most important jobs of the risk manager is to establish an information gathering system to keep him or her advised of the operations of the district. This process should not be limited to the physical risks of district operations, but should extend to such areas as curriculum development, parent clubs, community use of facilities, break time activities of the staff, classroom activities and field trips to name a few.

The successful risk manager will establish him or herself as an advisor to whom other administrators can come for help in evaluating risks. Participation on curriculum development committees will enable the risk manager to have

input during the planning stages of new programs. Various aids may prove useful to the risk manager such as flow charts, checklists, inventory forms and questionnaires. It is important that such aids form part of an overall information gathering system and not merely be completed as a matter of form.

Risk Measurement

Three dimensions of risk deserve careful consideration: probability, frequency and severity. While each needs to be considered individually, it is the relationship between them which is critical.

Probability/Frequency. A detailed discussion of hypothetical probability distribution is beyond the scope of this chapter. However, a general understanding of this subject is essential to the aspiring risk manager. Probability is the likelihood that an event will occur. It may be helpful to divide probability into categories indicating the potential for occurrence, such as none, low, moderate, high, definite.¹

Severity. The severity of loss is the more important consideration. Management of the catastrophic loss is the single most important function of the risk manager.

Risk Reduction or Elimination. Only in rare instances will the risk manager be able to eliminate risks completely. Generally, his or her contribution will be to educate other decision makers about the hazards of doing business and to direct his or her expertise toward the reduction of risk.

For example, one major area of concern is the handling of all moneys within the district. The necessary checks and balances must be adequate to meet all legal and insurance requirements. This includes the proper accounting for grants and bequests. Effective controls over financial matters will minimize the costs of purchasing necessary fidelity coverages.

Transfer of Risk

Risk transfer can be divided into two basic areas. The first is the non-insurance transfer. Often a risk can be transferred to another party through contract or other agreement. An example of this would be to require contractors to contractually accept liability for all operations.

Another example would be the *hold harmless* clause or agreement. The signer of the agreement agrees to hold the other party harmless for certain acts or conditions. Such agreements are often contained in standard contracts or sales agreements. Legal precedents are not clearly established with the use of such agreements.

The remaining area of risk transfer, and by far the best known, is the insurance transfer. In theory, the purchase of insurance should be the last step to be taken. However, when the costs of insurance are not prohibitive, the purchase of insurance is often the only step. As the cost of insurance rises and/or the market becomes restricted, insurance purchasers become more creative and resourceful.

Assumption of Risks Incapable of Transfer (Retention)

The decision to retain a risk will depend on many factors. The contingent factors will vary as market conditions change. Basically, risks should be retained when the

frequency is high and the severity is low. In such cases, the purchase of insurance is basically "trading dollars." For example, if the district has a high frequency of glass breakage, it may be more effective to have glass replacement handled by maintenance personnel than to purchase insurance against such breakage. The acceptance of deductibles is another form of risk retention. The calculated use of deductibles based upon an analysis of frequency and severity can reduce the combined cost of insurance and retention.

The district will occasionally be forced to retain risks when no market exists for the placement of insurance or the cost is prohibitive.

Legal Matters

Many areas of risk management involve legal research and analysis as well as other legal-type skills such as letting bids, conducting negotiations, drawing up contracts and the like. Applicable law may be state or federal. As a result, the risk manager will need frequent access to competent legal counsel. If such counsel is not currently available, it will be imperative for the risk manager to negotiate some arrangement to provide access to legal opinions. The proper use of legal counsel will avoid many problems. Too often, attorneys are called upon to defend actions which would not have been taken had they been consulted earlier.

Applicable State Code Sections

Prior to the decision to purchase insurance or retain risk, the district risk manager should thoroughly research the various code sections pertaining to the requirements to insure certain exposures. These requirements will vary greatly from state to state. Some states will allow the district to elect certain options in insurance and self-insurance (see section on self-insurance). When code requirements for insurance exist, one should be certain that the code section numbers are listed in the insurance policy or endorsements.

Bidding Versus Negotiations for Insurance Requirements

In some states requirements to bid insurance can limit the options available to the risk manager. Many districts assume that such a requirement exists even though the bidding requirements for their state may apply only to the purchase of materials and supplies. The state requirements should be reviewed with district legal counsel. Where the district can decide for itself how to purchase insurance, superior results may often be obtained by using alternatives to bidding.

Putting the district's insurance requirements out to bid every year does not provide any continuity between the district and its insurance carriers. While this may not seem important in a soft insurance market, such continuity can provide a vital edge when market conditions tighten.

An alternate method, with many variations, involves the selection of an insurance broker, through some type of competitive selection process, based upon specifications of the services desired. The broker is then charged with obtaining competitive quotations from various insurance carriers based upon specifications developed jointly with the district. Since the district needs much more than just the purchase of insurance, the selection of a competent broker is critical to the risk

management program of the district. The broker should have staff qualified to advise the district on the state of the insurance market as well as to assist the district in developing the best package of insurance coverages at the best price available.

Contracts

School districts assume liability by contract daily without being fully aware of the exposures accepted. Purchase orders, sales contracts, construction contracts, maintenance agreements, building leases and equipment leases can each contain hidden liabilities. All contracts should be reviewed for insurance considerations as well as budgetary and legal ramifications by the appropriate person. Districts often have an agreement to send copies of all contracts to the broker of record for review, in addition to an in-house review.

Contracts Requiring the Tenant To Supply Insurance. If the district, as tenant, is required to purchase building insurance, the lease must be specific as to:

1. Amount of coverage.
2. Source of valuation and frequency of update.
3. Additional insured requirement.

Hold Harmless (Indemnity) Agreements. Under such an agreement one party assumes some or all of the other party's liability. Such agreements are subject to negotiation and will reflect current practice in a particular area. The party with the weakest negotiating position will often be forced to agree to such an arrangement. The district must be aware of the consequences of agreeing to accept any liability through a hold harmless agreement. Insurance contracts in force may not permit such an agreement. Generally, it is the district which should attempt to require the other party to hold the district harmless. Such a clause should stipulate that the indemnitor will not only pay damage awards, but also will defend or pay the costs of defense. The latter would allow the district to choose its own counsel.

If the district is to be held harmless by another party to a contract, it is important to verify that the other party will be able to pay any award for damages. In addition to requiring the other party to show proof of insurance, the district should also require that the district be named as an additional insured. Sample statements to be reviewed by legal counsel are as follows:

SAMPLE WORDING FOR AN ADDITIONAL INSURED CLAUSE

The _____ district is to be included as an additional insured as respects liability arising out of the use of _____. It is further agreed that _____ liability policy should be endorsed to be primary insurance as respects the interests of the district and that any other insurance maintained by the district is considered excess and not contributing insurance.

SAMPLE WORDING FOR A HOLD HARMLESS AGREEMENT

Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to him, to any subcontractor, to the district, or to district employees on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes. Contractor shall assume the defense cost of and save harmless the district and its officers and employees from all claims, loss, damage, injury and liability of every kind, nature and description directly or indirectly arising from the performance of the work. Approval of the insurance contracts does not relieve the contractor or subcontractors from liability under this hold harmless clause.

Qualifications of a School District Risk Manager

School boards are sometimes reluctant to recognize the importance of risk management until events call the fact to their attention. Such an event can be a revised state code section exposing the district to risks previously unanticipated or the filing of a lawsuit.

The qualifications of successful school district risk managers are almost as varied as the districts in which they practice. Normally, the risk manager will be a member of the business staff with:

1. An overview of the entire risk.
2. Some insurance experience.
3. Budgetary knowledge.
4. Knowledge of existing codes and statutes.
5. Knowledge of legal contracts.
6. Knowledge of building design requirements.

The competent risk manager will have some knowledge in each of these areas. In the larger district, the risk manager will often have previous experience in one or more technical insurance fields.

The person designated as risk manager, if not competent in all areas, should be in a position to enlist the services of other staff members as resources to enable him or her to function at an acceptable level of efficiency.

Most importantly, the risk manager must be aware that risk management is an integral part of the overall management of the district and requires continuing attention and not sporadic consideration.

The basic concept of risk management in the operation of the district should be set forth in writing by the school board and should include:

1. Board policy statement.
2. Procedures to implement board policies.
3. Objectives of the risk manager position.
4. Responsibility and authority of the risk manager to accomplish the job.

Much of the success of the school risk manager will depend on how well he or she can work with the various segments of the insurance community. This success will depend in large part on the ability to evaluate the advice, counsel and marketing techniques of insurance brokers. The ability to distinguish between sound advice and marketing efforts will allow the risk manager to fulfill the insurance requirements of the district.

The competent risk manager must not succumb to either of the extremes in regard to dealing with insurance brokers. On the one extreme is the risk manager who believes everything which he or she is told by the broker. Equally as bad is the complete distrust of any information coming from the insurance industry.

Insurance Basics

Insurance carriers are different from manufacturers of products in that the carrier's obligation to provide their "product" (claims payments) is at some point in the future. In this respect they are more like banks than manufacturers. The government is obligated to provide some level of assurance that insurance carriers will be

able to meet their obligations. Modern day life would be nearly impossible without the security which various insurance coverages bring to both personal and business activities.

Government Regulation

The McCurran-Ferguson Act (Public Law 15) was passed in 1945 to reduce the confusion following several court decisions. This act stipulates that regulation of the insurance business shall remain with the states except where Congress has specifically enacted legislation. Examples of federal legislation would include E.R.I.S.A., minimum wage laws, civil rights laws and others. The primary purposes of both federal and state regulation are financial stability of insurance carriers and fair trade practices. The real task is to balance regulations which will promote financial stability and still allow for competition to be the main regulator.

Each state government has an insurance commissioner who is usually appointed by the governor. The insurance commissioner is responsible for enforcing the insurance code within his or her state. Most commissioners belong to the national association of insurance commissioners (N.A.I.C.).

The Insurance Contract

The insurance contract is subject to the same basic contract laws as in any other contract. However, the insurance contract will usually be much longer and more detailed than most other contracts. In addition, many of the terms used in the insurance contract are unique to the insurance industry. Evaluating insurance contracts is often beyond the capabilities of even the seasoned risk manager.

Much of the language in insurance contracts or policies is standardized by policy type. Thus, a standard fire policy will have much the same language regardless of the company. There are, however, important exceptions to this generalization.

Rating Bureaus

Rating bureaus exist for the primary purpose of pooling the experience of many insurers to provide comprehensive rating information. Insurers are not required to participate in rating bureaus. Some insurers participate in one or more bureaus to obtain rating information and then may deviate from those rates for certain classes of business. Operation of bureaus will differ by geographic area as will their requirements for participation. Insurers not participating in any bureau are usually referred to as independent insurers.

In some areas, the term "bureau" has been replaced by the term "insurance service office" (ISO). Indirectly, the ISO exerts some regulatory pressure on its participating members by establishing rates and by classifying risks. Unfavorable classification of a risk by an ISO may force an insurance purchaser to seek an independent insurer. Many independent insurers will use bureau rates as a guideline, especially in areas where they have inadequate rating information of their own.

Admitted Carriers versus Non-Admitted Carriers

Insurance carriers are considered domestic companies in the state in which they are incorporated and foreign companies in any other state. A company licensed to

conduct business and sell insurance is referred to in many states as an "admitted carrier." Due to limited staffing of insurance departments or commissions, active regulation is limited to domestic carriers. Thus, purchasing insurance from a foreign or non-admitted carrier may carry additional risk over purchasing coverage from a domestic carrier. In most states, the insurance commissioner will only assist in collecting from admitted carriers. Insurance placed with a foreign or non-admitted carrier will usually be placed through a broker with a surplus lines license. This usually involves at least one additional broker and, therefore another level of commissions.

Insurance Broker and Agent

An insurance broker does not represent insurance companies, that is, he or she is not the agent of any company. The broker may place coverage with any carrier which will accept the business. An agent has a contract to represent one or more companies. An agent may also participate in bonuses for the amount of business placed with a particular company or on that company's good experience. These distinctions do not exist in all states and some states treat brokers and agents exactly the same. Some states issue different licenses to brokers and agents, while others issue only one category of license.

It is important, when dealing with an insurance broker or agent, to understand his or her status. Most school districts will likely deal with brokers due to the unique needs of the school for broad insurance coverages. The term broker will be used throughout this chapter unless otherwise noted.

School district risk managers will often be concerned with the commission arrangements between their brokers and carriers. If questions arise as to whether commissions are excessive or vary greatly between carriers, other arrangements can be made to compensate the broker for his services. Insurance may be billed net of commissions so that the risk manager may see the exact cost of insurance. A commission percentage may be agreed upon for each line of business between the school district and the broker. The broker may also be compensated on a fee for services bases. While this may require some extra record keeping, it may be necessary to monitor actions of commissions to remove doubts as to whether commissions are excessive on some insurance placements.

Responsibilities of the District to Its Insurance Carrier

The following is a list of basic responsibilities of a school district in the insurance transaction.

1. *Prompt reporting of claims and potential claims.* Some policies may contain a provision that the carrier is not liable unless the insured reports the claim within a certain period of their first knowledge of the claim.
2. *Cooperation with the defense of claims.* Various adjusters, attorneys and investigators may need assistance with anything from photos and records to aid in locating witnesses.
3. *Employee education.* District employees must be educated not to make prejudicial remarks or statements to anyone regarding an accident or other

incident. Even a careless statement made immediately after an accident may turn out to be very damaging.

4. *"Good Faith" negotiations.* If a claim could have been settled below the insured's retention or deductible but is eventually settled for much more, the carrier may refuse to pay claiming "bad faith."
5. *On-going contact.* Notify the carrier promptly when additional exposures are created such as adding vehicles, buildings, employees and so on.

Loss Control

Whether sophisticated or simple, the goal of any loss control program is to conserve assets. These assets can be divided into three general categories: 1) people (students, staff and public), 2) property and, 3) cash. To achieve the goal of asset conservation, the following strategies need to be implemented:

1. Loss identification and measurement.
2. Loss avoidance or prevention.
3. Loss reduction.
4. Post-incident claims control.

Loss Identification and Measurement

The basic steps in identification and measurement were discussed in the beginning of this chapter. This section will emphasize the importance of adequate record keeping to effective loss control.

Loss avoidance or prevention. Obviously, the most effective loss control activity is the avoidance or elimination of an activity or circumstance which will produce a loss. It is at this level of loss control that the greatest impact on district finances can be accomplished. If the risk administrator can be involved in the planning stages for all new activities of the agency, many ill advised activities can be avoided. It is much simpler to avoid certain activities than to discontinue them after problems arise. Board policy should require that all new curriculum programs are reviewed by the proper panel of district personnel prior to implementation. Such a review helps to ensure that such new programs conform to established district policy which would include loss control considerations (see Appendices).

Often many decisions regarding new programs, materials, personnel, sites and equipment are made or directly influenced by staff members having no guidelines regarding loss control or loss control activities. Even though not all losses are avoidable, the frequency of losses can be reduced through the proper loss control activities. Information concerning losses which have occurred previously is essential to the prevention of their reoccurrence.

Loss reduction. Two different activities need to be implemented to effectively reduce the severity of loss. First, as much preventive work as possible must be undertaken to minimize the severity of a loss. Second, a great deal of planning needs to be undertaken to provide necessary training, procedures and materials for post-incident claims control.

Post-incident claims control. Post-incident claims control involves those activities which occur in the critical period immediately following the discovery of a loss. For example, the point at which a fire is out is the starting point for post-incident claims control. These activities include: recovery of salvageable materials, security to prevent further loss and locating inventory lists.

Loss Control Programs

The implementation of a loss control program must begin at the top. Without the support of the board and superintendent, a loss control program is a literary exercise. The board of education should adopt a rather simple policy statement expressing its commitment toward the controlling of losses and instruct the superintendent and staff to develop the necessary regulations to implement such policy. This stated commitment by the board will make it known to the staff and the community that loss control will be a district way of life and not a paper project (see Appendices).

The assignment of staff responsibility for risk management and loss control is of great importance. If this assignment is made too far down the organizational ladder, the program will suffer. The loss control administrator will need to become familiar with the following:

1. Appropriate staff and local codes.
2. Insurance principles.
3. Claims adjusting procedures.
4. Building codes.
5. Management techniques.
6. Finance and accounting.

The development of loss control programs for the district is not as difficult as is the communication of these programs to the staff. Many sources of model programs exist for the novice loss control administrator. These include professional organizations, large corporations, nearby districts and any number of publications.

The communication of these programs and their importance to the district are the most difficult steps. It should be obvious that one administrator or even the entire business office staff cannot implement these programs without the cooperation of the entire district staff. This communication, like many others, should not be one way. No loss control administrator could ever find the time or expertise to develop and implement effective and efficient loss control programs alone.

Some of the areas which have proven to be worthy of early attention would include:

1. Pre-employment physical exams.
2. Job-related safety training programs.
3. Safety communications system.
4. Accident investigation program.
5. Safety committees.
6. Safety inspections.
7. Safety materials, equipment and training.
8. Record keeping system.
9. Safety performance as part of employee performance evaluation.
10. Adequate inventory procedures.
11. Participation with other agencies, companies or coalitions to share ideas and resources.

Pre-employment physical examinations. The establishment of an effective pre-employment physical program can be very difficult due to the maze of federal, state and, occasionally, local regulations. In particular, federal antidiscrimination laws can be very intimidating. However, effective programs are now in place in both the public and private sectors. One critical point to remember is that such a program must be based upon the actual physical requirements of each job. If a particular physical condition has no bearing on the performance of the position in question, any consideration of that condition will certainly be considered discriminatory. A determination of whether an applicant can physically perform a particular job can only be made by a qualified health professional. Most importantly, the health professional cannot make a professional determination without having a recent, detailed job description of the subject's position. The pre-employment physical examination is only one part of the employment process which is of vital interest to the loss control administrator. Some other areas which are crucial to the district are:

1. Permissible questions on job applications.
2. Statement attesting to truthfulness of statements on the application, signature and consequences for falsification.
3. Use of medical information to dismiss or not hire.
4. Confidentiality of medical information.

The value of a loss control program or activity lies in the losses prevented or in the cost containment of losses which have already occurred. A comprehensive, cost effective loss control program is one of the most difficult aspects of risk management. Outside consultants rarely have time and information to understand the many facets of school district operation. Staff members are usually so involved with day-to-day activities and "putting out fires" that they have difficulty in seeing the overall patterns.

Possibly the single most important objective of any loss control program is the development of a structure which will allow a district to evaluate its own loss control activities and make adjustments based upon such findings. For example, pre-employment physical programs are useful only to the extent that they reduce workers compensation injuries or costs. That is, the exams have value only in the losses they prevent.

Loss prevention through accident investigation. It is important to remember that the purpose of investigating accidents is to prevent future occurrences, not to assess blame. The establishment of a closed loop accident reporting-investigation-prevention program cannot be accomplished without the cooperation of the employees at large. Statistics indicate that about 85 percent of all worker's compensation claims are caused by improper work habits, leaving only 15 percent caused by defective "things," such as equipment or stairs.

Loss prevention through accident investigation involves data collection, data analysis and plan formulation and on-the-job safety.

Post-incident cost containment involves containing the extent of damage/injury through proper post-incident activities which includes the acquisition of fire, liability (personal injury to a non-employee) and worker's compensation insurance, and by minimizing the total cost of the incident through proper, post-incident activities.

Data Collection

Many of most effective loss control programs are those which are developed in-house to correct some known problem area. Therefore, what is needed is a method to detect problems early before costs mount or work habits become firmly established. A computer is usually required to sort and classify large quantities of data. In addition, simple, concise procedures for gathering the data on causes and cures for various loss generating incidents must be established.

To assist with data analysis, a loss matrix might be developed. For example, in the case of worker's compensation, the first step in loss analysis would be to categorize losses, i.e., type of employee by type of injury, part of body by type of injury, type of accident by type of injury, part of body by type of accident and type of employee by type of accident.

When the data have been arrayed in matrix format, it is relatively simple to decide where the frequency/severity of loss warrants attention and in what priority order. When the categories have been prioritized, the data from accident investigations can be used to develop plans to prevent future recurrences. Once the closed loop of accident investigation-plan-corrective action-evaluation is established, refinements can be made in the system until it is truly responsive to changes in the patterns of accidents.

As the first line supervisor becomes involved in investigating accidents and completing the proper reports, he or she will gradually become aware of what factors cause accidents. When management has factual information on the actual causes of accidents, it can make adjustments in work routines, equipment, facilities and training to reduce or eliminate the causes of certain accidents.

On-the-Job Safety

In order for the accident prevention program to operate at anywhere near optimum efficiency, it is essential that safety be integrated into each and every part of the employment process. Since 85 percent of worker's compensation injuries are due to employee work habits, it is imperative that the employee be involved to the greatest extent possible.

An important element of safety programs are safety committees. Safety committees can provide significant feedback on how employees view their jobs as well as pinpoint potential problems. However, the employer must be prepared to correct deficiencies identified by the safety committee; otherwise the committee can become a negative factor. Safety committees must receive direction from some source. If it is not the employer, it may be someone or some organization which may have an axe to grind.

To maximize the effectiveness of loss control programs, it is important to include as many employees as possible. Employee involvement can include:

1. Agreements to share verifiable savings with employees.
2. Including safety programs in contract negotiations.
3. Making safety performance part of the employment and performance review process.
4. Education programs for employees to explain and "sell" safety.
5. Incentive programs to create peer pressure for those who might abuse the workers compensation system.

OSHA—Occupational Safety and Health Act

The Federal Occupational Safety Health Administration (OSHA) laws enable individual states to adopt their own laws regulating safety at the workplace providing that the state laws are not less stringent than federal law. Since many states have exercised this option, it is difficult to provide an overview of state occupational safety laws. Every district should obtain from either federal or state OSHA, the "General Industry Safety Orders" or their equivalent for the appropriate state. The goal of all federal and state OSHA laws is the protection of the worker from the hazards of the workplace. In order to ensure compliance, civil and criminal penalties were included in the programs. The following are general procedural requirements of OSHA.

Posting Requirements

The district is required to post the appropriate poster explaining the intent and coverage of the act in each location where there are employees. Annual summaries from the log of occupational injuries and illnesses must be posted where they are visible to all employees. Citations received from federal or state OSHA must be posted in a prominent place where the violation occurred.

Recordkeeping Responsibilities

A daily log of reportable occupational injuries and illnesses must be maintained. The definition of reportable injuries may differ from state to state. Detailed record of each reportable injury or illness must be maintained and available for inspection by OSHA inspectors. At the end of each year, a summary of the log of occupational injuries and illnesses must be prepared. Administrators are required to immediately report to the proper state or federal department all serious or fatal injuries. Definitions may vary. If toxic substances or harmful physical agents are present, records must be maintained and made available to your employees.

OSHA Inspections

The district must allow a compliance engineer to enter the establishment without delay to inspect or to investigate during regular working hours. The compliance engineer may privately question any employee or administrator. The district must allow an employee or his representative to accompany the compliance engineer. All required OSHA records must be made available to the engineer. If the investigation reveals a violation, the district will be given a written citation describing the violation and the length of time to correct the situation.

Complaints

Complaints of unsafe conditions by employees must be investigated within three days with priority given to the most serious complaints. The name of the person submitting the complaint is confidential. Any actions against employees submitting complaints is forbidden. No actions may be taken against any employee(s) refusing to work where any safety or health standard is violated when such violation creates a hazard to any employee.

Appeals and Penalties

If the district receives a citation, it will have fifteen working days to notify OSHA of the desire to appeal. The appeals board can affirm, modify or cancel the citation and proposed penalty.

Generally public employers are exempt from civil penalties, however criminal penalties may be levied against specific managers. Any officer, manager or supervisor may be guilty of a misdemeanor for knowingly violating any standard or safety order of OSHA or for causing another to do so. Being charged under OSHA does not relieve the manager from being charged under other state or local statutes. Company officials have been charged and convicted for the deaths of employees where the hazards were known to the officials.

Property Insurance

Fire Insurance

Standard fire coverage includes protection against losses from fire and lighting and other optional coverages by endorsement. The fire insurance policy is probably the most standardized policy in the insurance industry. The major sections of the fire policy are described below.

The declarations page. This section contains the names and addresses of the insured, names the insurance carrier, the agent or broker, the mortgagee, the premium rate and the property description and location.

The insuring clause. This section indicates that the insurance company will indemnify the insured for loss to the property described when it is caused by the perils stated, provided that loss occurs during the policy period.

Conditions. This section covers collecting when there is other insurance, changes in conditions of the property and concealment or fraud.

Loss provisions. This section deals with required notice, details of the loss, inventory lists, protection of property, loss assessment, subrogation, arbitration and limitations on the insured's right to bring legal action.

Exclusions. Coverage for certain occurrences, such as acts of war, military operations, insurrection and rebellion and nuclear accident, are commonly excluded under most fire policies.

Fire insurance forms. Coverage under standard fire insurance policies is expanded by means of adding the following forms and endorsements:

- Dwelling and contents form.
- Building and contents form.
- Blanket form.
- Floater form.
- Schedule form.
- Reporting form.

Coinsurance (average clause). Fire insurance carriers offer lower premiums in exchange for the requirement to carry insurance equal to a certain percentage of property value. If insurance equal to that percentage is not carried, then the carrier will not pay for the full loss. This potential penalty places a burden on the insured to maintain insurance to valuation.

Agreed amount clause. This clause will, for an additional premium, remove the fear of being under-insured. An annual valuation is supplied to the carrier by the insured. The acceptance by the carrier eliminates any penalties under the co-insurance clause.

Extended coverage. This is probably the most used endorsement as indicated by the common reference to "fire and extended coverage insurance." The additional coverages include windstorm, hail, explosion, riot and civil commotion, damage from vehicles and aircraft and smoke damage.

Additional coverages. Depending on circumstances, districts may choose to opt for "additional coverage" for such items as:

Business interruption insurance (based upon earnings or value).

Rental value insurance.

Valuable papers insurance.

Demolition insurance.

Personal property of employees.

Personal property off premises.

Trees, plants and shrubs.

Deductibles. Premium reductions are available in return for accepting a deductible. Care should be taken in determining the deductible levels for each line of coverage. Schools should almost always have some deductible on property coverages. The size of the deductible would be influenced by the size, financial strength, loss history and management philosophy of the district, as well as market conditions.

If large deductibles are chosen, it is often advisable to purchase *aggregate stop loss coverage* to limit the exposure of the district to a certain number of deductibles per year. With a \$10,000.00 deductible per occurrence, a \$50,000.00 aggregate might be chosen.

Another decision is whether to opt for *actual cash value* or *replacement cost*. Actual cash value equals replacement cost less depreciation. This type of coverage should not be purchased unless the district can set aside the funds necessary to offset depreciation. The additional premium for replacement cost coverage is generally more cost effective.

Other Property Coverages

Some coverages, which are closely associated with fire coverage, are referred to as allied lines. They are as follows:

Crop insurance (hail, wind, insects, disease, freezing).

Earthquake coverage.

Water damage coverage.

Sprinkler leakage coverage.

Boiler and machinery coverage.

School districts are responsible for a wide variety of property for which special insurance coverage should be considered. Although most of the property will be owned by the district, some is owned by others, including teachers and students. The district will be required to protect such property from a number of potential types of loss through a number of different insurance vehicles including:

- Personal property floater.
- Messenger robbery.

- Inside robbery.
- Safe burglary.
- Fidelity bond.
- "3-D" bond.

Personal property floater. May be written with either property schedule or a stipulated amount of coverage. A deductible is almost always used to reduce premium cost. Recovery is usually limited to theft or vandalism. Mysterious disappearance is usually not covered.

Messenger robbery covers loss from robbery with threat or actual force. This coverage is primarily for large school districts where fairly large amounts of cash or negotiable papers are carried by district messengers.

Inside robbery covers robbery on the premises. Its use is normally restricted to locations with large amounts of cash such as bookstores, cafeterias and sporting events.

Safe burglary covers loss from burglary of a locked safe or vault on the premises. Recovery is contingent on proof of forced entry.

Fidelity bond insures the district against loss from the dishonest acts of its employees. Coverage may be by position or by name. Coverage is often required by state code.

"3-D" bond coverage is for destruction, disappearance or dishonesty. Blanket type coverage against multiple types of loss may be written in very broad form providing very good but expensive coverage.

While the purchase of the previously mentioned property coverages would ensure comprehensive protection for the school district, the costs would be prohibitive without carefully selected deductibles to control costs.

Boiler and Machinery Coverages

This is probably the least understood area of property insurance. The unusual aspect of boiler and machinery coverage is that the insurance coverage is not as important as the highly technical and specialized inspection service provided by all carriers. Coverages under this category may include:

- Actual property loss.
- Expenses of repair.
- Property damage liability.
- Bodily injury liability.
- Defense settlement and supplementary payment.
- Automatic coverage for newly acquired property.
- Use and occupancy loss.

Boiler and machinery insurances may cover the following types of property:

- Boilers, fired vessels, electric steam generators.
- Unfired vessels.
- Air conditioning and refrigeration systems.
- Electrical transformers.
- Pumps and compressors.
- Engines and machines of various types.
- Fans and blowers.

Coverage on an actual cash value basis will be less expensive to purchase but may leave the district with a large contribution in an era of rising equipment costs. Replacement cost coverage with a reasonable deductible will probably produce more favorable results.

Casualty Coverages (Liabilities)

The hazard called liability is a creation of law unlike the natural hazards to which property is exposed. Unless legally determined to be responsible, there is no hazard named liability. Such determination may be by a court of law or by an administrative body such as a worker's compensation appeals board. Liability is often called the "law of torts" although liability can also be created by accepting liability through some form of agreement or contract.

Three areas of torts are generally recognized: intentional torts, strict or absolute liability and negligence. An intentional tort is one where the person committing the act intends to do what he or she does. Battery, the intentional touching without permission of another person, is an example. Other examples are slander, libel and trespass.

Strict or absolute liability is assigned to those dealing in certain hazardous situations such as the use of explosives. Any damage caused by such use of explosives will be the responsibility of the person using the explosives. *Black's Law Dictionary* defines negligence as "the omission to do something which a reasonable man would do, or the doing of something which a reasonable and prudent man would not do."

In order for negligence to be found, actual loss or damage must arise from the failure to conform to a standard of conduct when there exists an obligation to conform to said standard.

Defenses Against Liability

Some legal doctrines, called defenses, can bar the plaintiff from recovering fully from the defendant. The two most important are assumption of risk and contributory negligence.

Assumption of risk. The injured party must have voluntarily and with knowledge decided to do something which placed him at risk, e.g., the plaintiff voluntarily got into the car of a driver who was obviously drunk.

Contributory negligence. The injured party must, by his actions, have contributed to the harm he or she suffered.

Comparative negligence. In those states which have adopted comparative negligence statutes, the preceding defenses would not be a bar to recovery of damages, but would bring about a reduction in the amount of the recovery. In the past, governmental units such as school districts often were immune to tort actions. Court decisions have removed or eroded such immunities to the point where schools are sued with great frequency in most states. Since the doctrines of governmental immunity vary widely from state to state, it is important to thoroughly understand the applicable laws of your state.

Sources of District Liability

School district liability may result from negligence in three areas:

1. Injury to pupils resulting from failure to provide adequate supervision. The district has a statutory obligation to provide adequate supervision for students. Failure to provide such supervision may be construed as negligence. A serious injury will usually result in such a charge.
2. Injury to persons or property resulting from the failure to maintain a safe place or to conduct operations in a safe manner.
3. Injury to outside persons or property resulting from the negligence of officers, employees or agents of the district.

Anyone authorized to act for the district or apparently authorized to act will be held to the standard of a "prudent person." That is, to act as would be expected of a reasonable, prudent person. Obviously, what constitutes prudence is subject to wide interpretation. Some states, or other jurisdictions, may impose standards which are more strict than ordinary prudence. Statutes often place more strict requirements on school districts than on other public agencies due to the nature of the school's mission.

Liability insurance is mandatory for school districts in most states. Some states also allow the district to self-fund all or part of the liability exposure to the district or its trustees. Coverage against the personal liability of officers and employees while acting within the scope of employment may be required or allowed depending on state statutes. Some acts by officers or employees may be considered as outside of the scope of employment such as libel or slander, and thus may not be insurable. Liability insurance coverage includes investigation of liability claims and defense against liability suits. The liability carrier is obligated to defend the district without regard to the merit of the claim.

The carrier will usually settle any case which its legal counsel does not expect to win. Settlement by the carrier may occasionally be made even though the claim has no merit, if winning is very unlikely. Districts should always try to participate in any decision regarding whether to settle or defend. Settlements are always subject to policy limits and deductibles or self-insured retentions.

Court costs are usually assigned against the loser in a liability suit. In most states, interest begins to accrue from the date of judgment. The posting of a bond will usually be required if an appeal is filed.

Use of school facilities by others. School facilities are used by many people and many organizations every day. Any of these uses can lead to suits alleging a variety of negligent acts or unsafe conditions. The liability coverage should be as broad as possible to protect the district against the wide variety of uses in most communities. In addition to insurance, the district can do much to protect itself against this type of claim. The district should require using organizations to provide certificates of insurance and to name the district as an "additional insured" on their liability policy.

In addition, every school board should adopt a policy concerning the use of facilities. Such use may be partially governed by statute or community expectations. Regardless, administrative procedures should be developed to implement board policy. Property drawn procedures will allow the district to control its liability exposure by eliminating improper uses and controlling other uses. Organiza-

tions desiring to use school facilities should have a clear understanding of these rules and requirements.

Bidding Versus Negotiating Insurance

Many districts routinely put their property and liability insurance out to bid every year or at other set intervals, a practice which may be statutorily required in some states. If this is not a requirement, better results may be obtained from other methods. While bidding may give the impression of being in the public interest, the results may not. When the market is tight, changing carriers every year will not produce the best price because brokers, knowing that they may lose the business because someone else is a few dollars lower, may not exert their best efforts.

An alternative method is to develop specifications for the services desired from the brokerage firm. After a selection process, the selected broker helps the district to develop specifications for the coverages required. The broker then obtains quotations from several carriers on the desired coverages including a range of deductibles and limits. The district should periodically evaluate the performance of the brokerage firm in terms of coverages obtained, costs, risk management advice and other services.

Liability Insurance Policies

Broad, comprehensive liability coverage should be sought by every school district. Broad form coverage is available in most states. Special school policies, having the advantage of including the coverages needed by most districts without numerous endorsements, may also be available.

The elements of a standard liability policy are outlined below.

Insuring agreement. This section contains the specific responsibilities of the insurance carrier.

Conditions. This section contains the responsibilities of the school district and outlines the procedures to be followed in case of a claim.

Definitions and special features. This section defines the covered hazards and special features of the policy.

Exclusions. An extremely important section. Exclusions are of two types, standard exclusions, such as nuclear war, and manuscript exclusions which are appended to the contract rather than being part of the pre-printed contract. The district should be very careful about accepting any manuscript exclusions. These can lead to very unpleasant results when claims are filed. Manuscript exclusions are much more common when the insurance market tightens.

Umbrella coverage. It is usually more economical to secure basic liability coverage limits of \$500,000 to \$1,000,000 and adding increased coverage through an umbrella policy. Another advantage of an umbrella policy is that it usually contains few exclusions and is therefore broader than the underlying liability policy. Any loss covered under the umbrella but excluded under the primary policy is subject to a self insured retention, usually \$25,000.

School board liability (errors and omissions). Also known as trustees liability, school leader's liability, or educator's liability, this coverage has become almost a necessity for all school districts. This type of policy provides protection for negligent acts, errors, omission or breach of duty by the institution, trustees, officers, administrators, employees, student teachers and volunteers. The policy pays after

a deductible is applied. Trustee's liability supplements general liability coverage and does not replace it. Court awards are usually apportioned between trustee's liability and general liability policies.

Awards for damages. Damages awarded by a judge or jury fall into three categories: special, general or punitive. *Special damages* are usually out of pocket expenses incurred by the plaintiff such as medical bills, loss of earning, property repairs and legal fees. *General damages* may be followed for those losses which are not directly measurable such as pain and suffering. *Punitive damages* may be allowed where the conduct of the defendant is grossly negligent, reckless and done with regard to life and property. Such awards are not insurable in most states.

Worker's Compensation

Worker's compensation laws were enacted to provide a satisfactory method of handling the volume of industrial accidents. Prior to 1900, common law defenses (contributory negligence, assumption of risk, negligent acts of fellow servants) made the handling of claims for injury or death slow and the outcome uncertain. Between 1900 and 1910 employer's liability laws were adopted by some states. In 1911, the first worker's compensation law was adopted.⁴ Today each of the states have such laws, in addition to the federal government. Since state laws vary so greatly, it is incumbent upon the school district risk manager to become familiar with the requirements of his or her state.

Worker's compensation laws. Historically a basic tenet of worker's compensation law was that it was the only source of action by an injured employee. Thus, an employer gave up the presumption of fault in return for a single course of action by the employee. Although courts have eroded this doctrine in some states, it is still basically true. A primary goal of worker's compensation law was the sure, prompt and reasonable payment of benefits and medical care to injured employees. This goal has been met more successfully than any of the others. Another goal of worker's compensation law was the reduction of payments to attorneys for handling personal injury claims. This goal has not been achieved due to the active involvement of interested attorneys.

In some states an appeal can be filed even though the employer has not been notified of an injury. Most states require the proof of worker's compensation insurance in order to conduct business. In those states which allow self insurance, a "notice of consent to self insure" is required.

Rating laws. Rates are established by a workers compensation rating bureau for a particular geographical area. Rates are established for classes of employees, i.e., firefighter, general clerical and so on. In some states, school districts may be considered as single class occupations, that is, the rate per \$100 of payroll would be the same for all employees.

Experience modification. To encourage safety, worker's compensation rates are modified by a formula established by the bureau, the state fund or commercial carrier. Districts below a certain size may be subject to minimum premium requirements and be charged a higher modification factor than their actual losses would indicate. The formula for calculating a district's worker compensation premium is:

$$\text{payroll} \times \text{rate} \times \text{e.m.f.} = \text{premium}$$

Benefits. All states now allow unlimited medical care for industrial injuries or illnesses.⁵ Most states provide indemnity benefits (temporary disability) at 66 2/3

percent or higher with some allowing 100 percent. Permanent disability benefits are available according to schedules for the permanent impairment from an industrial injury. Death benefits are paid to the beneficiary of the victim of an industrial accident or illness.

A call for reform of the worker's compensation system is often heard. Proposed revisions may be classified into five groupings:

1. Annually, Congress considers legislation to federalize worker's compensation benefits due to the differences between state benefit levels.
2. The Chamber of Commerce of the United States advocates that all employers have the option of purchasing commercial insurance rather than being subject to a monopolistic situation with the various state funds.
3. More states are allowing the option of self insurance to qualifying employers.
4. The National Association of Insurance Commissioners has adopted model programs for worker's compensation.
5. Some states have adopted a "wage loss" concept whereby permanent disability awards are allowed only for reduction in wage earning capacity. This concept seems to hold out the greatest promise for actual reform of the worker's compensation system.

Self insuring worker's compensation benefits. Most states allow qualifying employers to self fund their worker's compensation exposures. However, many of these states do not extend this privilege to school districts.⁴ Where self funding is available, there may be requirements as to minimum size, posting of bonds or other requirements. Excess worker compensation insurance is almost always purchased to stop the loss from any one incident to a pre-determined level such as \$100,000. Some states also allow the purchase of aggregate stop loss insurance to protect against combined losses.

Automobile Insurance

Automobile insurance is confusing due to the wide variation in state laws. Many states have compulsory insurance laws, while others have enacted no fault laws or uninsured motorists laws. While the laws among the states vary, almost every state has some form of financial responsibility law. These laws require the suspension of drivers license and/or registration if the owner or operator fails to furnish insurance coverage or furnish security to cover the payment of any judgment arising from an accident.

Automobile insurance policies typically include coverage for automobile liability, collision and comprehensive physical damage. Automobile liability coverage is very similar to that of general liability (previously covered). Physical damage coverage (property damage) or *collision coverage* pays, after the deductible, for loss to owned automobiles and to non-owned autos operated by an insured. *Comprehensive physical damage coverage* pays for physical damage other than collision and may be written with or without a deductible. Comprehensive losses could

stem from fire, windstorm, flood and theft. Coverage for personal effects in the owned auto and transportation expense reimbursement are included with the comprehensive coverage. Towing costs may also be included.

Sections of the automobile insurance policy include a declarations page and terms and conditions. The declarations section identifies the insured, the insurance company, coverages and limits, forms and endorsements attached and the policy number. The conditions section specifies which autos are covered, where and when coverage applies, the insurer's obligations, exclusions, who is insured and territories covered.

Uninsured Motorist Coverage

While not mandatory in most states, uninsured motorist coverage is contained in many automobile package policies. One concern for the insurance buyer is to require high enough limits on this coverage. Another concern is to be sure that coverage for underinsured motorists is also included. Many drivers carry only the lowest limits of liability available. Such limits will often be too low to cover a major accident.

There are a number of different automobile policies suited to different types of operations. These will also vary widely from state to state. The district risk manager should ascertain from the broker of record exactly which forms are available in a given state. Automobile package policies, where available, will offer broader coverages than the basic auto policy.

Employee Driving Records

No employee should be allowed to drive a district vehicle or to drive his or her own vehicle on district business prior to obtaining the employee's driving record. In addition, employees should receive an orientation from the district on safe driving practices and necessary report and accident forms.

In at least one court case (*Roane Grain Company vs McFarland*), the employer was held responsible for negligence by allowing an employee with thirteen driving violations to drive a company vehicle on public roads. The punitive damages awarded in this case were \$24,000, while the actual damages were only \$420. This case dramatically displays the need to obtain employee driving records. The department of motor vehicles will supply this information in most states.

Group Purchase of Insurance

Group purchase of insurance can be accomplished either through the Joint Purchase Agreement or through a less formal joint buying agreement depending on state statutes. The joint powers approach will often combine self insurance with joint purchase depending upon the cost effectiveness of each. Group purchase programs will have various options between deductibles and self-insured retention under insured programs. Under a deductible program, the insurance carrier adjusts claims and the insured pays for losses up to the level of the deductible. Under a self-insured retention program, the insured is responsible for the adjustment of claims below the deductible amount including the costs of investigation and defense. The informal buying group will usually be limited to only the purchase of

insurance since there is no authority for the joint exercise of powers. However, the group will usually retain options in selecting individual deductibles, limits and so on.

Potential drawbacks. In an informal buying group, there can be more difficulty in management of the group since it is less formal and members do not have as much of a financial interest. The buying group usually does not have any pooled funds and thus members may move in and out of the pool more freely.

Another problem may arise in the management of the group. Voting procedures can prove to be a stumbling block for the group. Larger districts may prefer a proportional voting formula where the number of votes for each district depend, in part, on the premium volume of the district. Smaller districts will usually prefer to have a single vote per district.

Self Insurance—Self Funding

Although these terms are often used interchangeably, some technical distinctions between the two concepts may be drawn. Self insurance implies that the self insurer is retaining the full risk and funding losses on a "pay as you go" or cashflow basis. Self funding implies that funds have been set aside and allocated to pay for anticipated losses. For convenience, we will use the term "self-insurance," except where it is important to stipulate the funding method.

Self insurance was originally considered only after traditional insurance became unavailable or prohibitively expensive. As the success of self insurance programs has become more widely known, it has become more of an option than a last resort. Self insurance is not a venture to be entered into lightly. Since most administrators who have the responsibility for risk management or insurance purchasing have little background in the technical areas of probability and distribution theory, it is not difficult to underestimate loss potential.

Some states limit self insurance or self funding to certain types of risk such as worker's compensation. Others may limit this approach to districts over a certain size while other states prohibit it completely.

Considerations for the Self Insuring of Risk

Self insurance is not all that different from insurance. That is, the basic requirements of spread of risk, frequency of occurrence, potential for catastrophic loss and determination of risk must be present. Consideration of self insuring any risk must be based upon an objective analysis of these factors. If the necessary skills to accomplish such an analysis are not extant within the district, they should be obtained elsewhere before proceeding.

Minimum size. It is obviously impractical to self insure the liability exposure for one automobile. However it may quite prudent to self insure a fleet of one thousand automobiles. There is no magic formula for computing the minimum size at which the "laws of large numbers" come into play for any given risk.

Spread of risk. Using the example of a fleet of 1,000 autos, self insuring the theft and physical damage portions would be more practical if those vehicles were garaged in several facilities in several cities. It might not make economic sense to self insure them, if they were all housed in one large facility.

Potential for catastrophic loss. The potential for catastrophic loss is much greater if all vehicles are housed together rather than spread across a larger geographical area. Housing all vehicles together would make the purchase of some form of stop loss insurance almost mandatory. Unless insurance is economically unfeasible, self insurance should be considered only as an alternative to purchasing insurance. That is, the decision to self insure should be made only after comparing the attendant costs, benefits and drawbacks of all available options. Self insurance should not be a goal but rather one tool to be considered in the search for ongoing solutions to the problems of managing school district risk. To summarize, the district should consider retaining those losses which may reasonably be anticipated, are recurring, and limited in severity. The threshold for inclusion in these categories will vary as the insurance market fluctuates.

Funding. Items which qualify for self insurance are usually funded in one of two ways. Minor items with high frequency, such as glass breakage, may be treated as expense items. If these items are to be treated as an expense, then funds should be allocated on a line item basis. For larger items with less frequency or higher potential, reserve funds should be set aside. Funds may be reserved in several ways. In those states which allow joint pooling, the funds may be held and invested by a joint powers authority.

Joint Exercise of Powers

Some states statutorily allow public agencies to jointly exercise any power which they individually possess. This device will allow self insurance to become an option for many small districts which could not meet the minimum qualifications for self insuring on their own. The authority to exercise joint powers may include a number of restrictions including: how funds can be invested, what risks can be treated, minimum size, state regulation, deposits or bonds to be posted, licensing and so on. The restrictions imposed are usually a small price to pay for the greatly expanded opportunities available to districts under a self insurance program.

Operations of joint powers authorities. The spread of joint powers authorities has been phenomenal in some states. It has been estimated that in California, 90 percent of all school districts participate in a Joint Power Authority for one or more coverages. Most of the remaining 10 percent are large districts which are individually self insured. The major reason for this figure is that through the Joint Power Authority districts as small as three employees have been able to enjoy the advantages of self insurance. The economies of operating a Joint Power Authority have contributed to their popularity in California. Having a fully qualified risk manager is usually limited to very large districts. Through a Joint Power Authority, any district can have access to the same work products as the largest districts in the state. Investing of Joint Power Authority reserves has reduced the cost of covering risks for the member districts. In many programs, the investment earnings equal or exceed the overhead costs of the Joint Power Authority.

Employee Benefits

Employee benefits have traditionally been handled by the personnel department. However, this situation is now changing due to the spiraling premiums which be-

gan to accelerate during the late 1970s. The decisions concerning the placement of benefit coverages require more background in risk management than is often found in personnel departments. In most districts, the cost of benefits is second only to salaries. Some districts have resorted to reporting the cost of benefits on the warrant stub with each payroll.

Spiraling prices have forced the examination of plan benefits for effective delivery and for cost effectiveness. The major bar to such analysis has been the lack of loss experience. The dissemination of loss experience would, of course, be detrimental to the profitability of the carriers, since those accounts with better than average experience would consider alternative funding plans. In order to gain such loss experience, districts may turn to experience rated programs or to self funding. Under such programs, loss data are distributed regularly, although not in as much detail as might be desired. Much depends on the data processing capabilities of the carrier or association.

A thorough analysis of various benefit plans is beyond the average risk manager. In fact, it is beyond many brokers and consultants. This is an area in which it is often wise to consult with the best available expertise to ensure that the benefit plans are designed are effectively, understandably and affordably.

Medical Plans

Medical plans are comprised of two basic types, although there are many variations of each. They are Health Maintenance Organizations (HMO) and indemnity plans.

Health Maintenance Organizations. The HMO act of 1973 requires employers with over twenty five employees, to offer employees a choice between the district's indemnity plan and a federally qualified HMO. The HMO must be offered if it approaches the district or if employees request an HMO. More than one HMO may be offered if the district so chooses and has enough employees to meet any minimum enrollment standards of the plans.⁷

Health Maintenance Organizations will often offer lower premiums than indemnity plans. This is due to the greater control which the HMO can have over costs and the great emphasis on preventive care. Some employees will not choose an HMO because they desire to choose their own doctor.

Indemnity plans. Indemnity plans include those offered by associations such as Blue Cross and Blue Shield and those plans offered by commercial insurance carriers. The similarities between these plans far outweigh their differences. Generally speaking, the "Blues" are often more liberal with respect to minimum group size than commercial insurers. Indemnity plans can be categorized by the types of coverage they provide, such as major medical, basic medical and hospitalization, or a combination. The great majority of policies written for school districts are the combination form which provides basic coverages after the application of a deductible, with major medical costs usually picked up on an 80/20 ratio. In some areas, 100 percent plans have been negotiated. These plans are attractive to employees, but are very expensive and tend to encourage over treatment since almost everything is paid after the deductible, if any.

The high cost of medical plans. The following are some of the reasons why benefit costs are soaring:

1. 100 percent paid plans.
2. History and purpose of the "Blues."

3. Lack of employee motivation to control costs.
4. Lack of understanding of where benefit dollars go.

Historically, fully paid, or 100 percent, medical plans cost the employer at least 7 percent more than plans where the employee pays at least some small part of the cost of medical care.⁴ The installation of a deductible or co-pay provision into the plan generally serves as a deterrent to over utilization. Interestingly, the size of the deductible or co-pay does not seem to be as important as the presence of the provision.

The Blue Cross and Blue Shield organizations were originally established to ensure a smooth flow of funds to the doctors and hospitals. While these organizations have accomplished many things in the field of group medical benefits, careful scrutiny is in order since they principally serve the constituents which created them—doctors and hospitals.

Under most, if not all, fully insured benefit plans, there is practically no incentive for employees to control costs or even to pay attention to costs. Employee education is the primary solution for this problem.

Since benefit carriers have usually been unwilling to share loss experience with schools, it should come as little surprise that school administrators have little knowledge of where benefit dollars go. Effective plan design is not possible without knowing the costs of various segments of the benefit plan.

Cost containment activities. Short term solutions to soaring costs may include:

1. Review of existing plans and attendant costs.
2. Alternative funding arrangements.
3. Preferred provider organizations.
4. Professional service review organizations.
5. Audits of provider billings.

Review of existing plans and attendant costs is an area that is beyond the skills of most risk managers. The best available talent should be consulted for this review.

Cost containment is very difficult if not nearly impossible under a fully insured plan. Not only is the trading of dollars with the insurance carrier expensive, it eliminates most of the options normally open to the employer. The options are almost all with the carrier and they have very little reason to control costs under current fully insured plans.

Alternative funding arrangements may be a viable option. Saving premium dollars, however, is not the primary reason for the utilization of alternative funding arrangements. The most important reasons are to gain loss experience and to regain some of the incentives lost to the carriers.

Preferred provider organizations (PPO) are still in the formulative stages and include a variety of types of organizations. The first type of PPO is comprised of members of an existing professional service organization which offers reduced fees and other services, in return for increased traffic through their facility. The second type is usually organized by a professional organizer whose speciality it is to establish PPOs.

Professional Service Review Organizations (PSROs) provide many specialized services to employers and benefit carriers. One of the most utilized is the concurrent review program under which the PSRO screens the length of hospital stays and the charges during the period of hospital confinement. A health professional visits the hospital and reviews treatment and length of stay. Doctors are sometimes asked to justify unusual procedures or seemingly excessive stays. Other programs in-

clude prior approval of hospital confinement. This program is currently meeting with much resistance from employee bargaining units.

Audits of provider billings, although often contracted to a PSRO, can be performed by less highly trained and paid staff. Training of employees to spot errors in hospital bills, in particular, can be effective. Of course, an incentive is necessary. The most effective incentive could be to pay to the employee one-half of any error found.

Dental Insurance

The inclusion of dental insurance in employee benefit plans has increased greatly since 1970. It is now an expected coverage in the majority of districts. Three types of plans are generally found in school districts: incentive care plans, prepaid plans and scheduled plans.

Incentive care plans. Under a typical plan, dental costs are reimbursed at 70 percent, up to the plan limit, during the first year of coverage. If preventive care, usually cleaning, is performed on schedule, benefit levels increase to 80 percent the following year and then to 90 percent and eventually 100 percent. There may be a deductible applied. Orthodontia benefits are often minimal, with a lifetime benefit of \$500 to \$1,000. This benefit is usually limited to minor children. Adding adult orthodontia is very expensive due to the limited offering.

Prepaid programs. Participants are required to use the services of listed dental offices. Deductibles may be used.

Scheduled programs. Payments, up to the annual limit, are based upon a fee schedule. Additional costs are borne by the employee. Premiums to the employer are lower, since increased fees do not result in increased reimbursement. Such plans are not highly popular with employees. Many variations on other types of insurances may exist locally.

Vision Care

A number of different plans are available for vision care. The major difference is in the frequency with which the covered employee may obtain lenses, frames and exams. The more often the benefits are available, the higher the premiums to the district. Deductibles may be used. If the plan is sponsored by an association of opticians, optometrists or ophthalmologists, the use of members will be encouraged by reimbursing non-members at a lower rate.

Disability Coverage

Coverage may be for either temporary disability, for long-term disability or for a combination. The most important consideration in the purchase of disability insurance is the coordination with existing pension plans and other programs. District purchasing programs not designed with disability insurance specifically in mind will end up paying for coverage never used due to an overlap of benefits. An elimination period is generally present, that is, benefits do not begin until the person is disabled for a specified period of time. Benefits are paid at a set percentage of salary, often 50 percent or 66 2/3 percent. Benefits may be limited to a set number of weeks, months or until retirement or some other event, such as eligibility for state disability programs, takes place.

Life Insurance

Life insurance is in greater or lesser demand depending on whether employee associations or unions provide such coverage. Currently, the district may pay for life insurance with pre-tax dollars, whereas association plans are paid for with after tax dollars. There are four types of coverage usually offered by districts: level term life, decreasing term life, accidental death and dismemberment and travel accident. Not all types will be offered by every district.

Level term. Under this arrangement each eligible district employee receives the same amount of life insurance without regard to age or sex. Additional, optional coverage may be made available through payroll deduction. Premiums are usually very attractive for the optional coverage.

Decreasing term. The amount of coverage depends on the age of the employee, with coverage decreasing with age. Premiums are level. Payroll deduction programs may be available.

Accidental death and dismemberment. Additional coverage against accidental injury can be added to either term life program for very modest premium charges. Payroll deduction programs can be made available.

Travel accident. Some states permit the purchase of this coverage for employees travelling on school district business. Cost is usually very low for \$100,000 or more of coverage.

Summary

In summary, the school business administrator must be aware of the function and practices which make up risk management. As insurance premiums continue to grow and with coverages becoming more complex such an awareness is becoming critical. This chapter has presented an introductory overview of this important area of school business management. Competent risk management personnel and quality legal counsel will increase efficient and effective use of taxpayer moneys.

NOTES

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APPENDIX A

Sample Policy Statement

It shall be the policy of the governing board of the _____ School District to

maintain a risk management program consistent with all legal requirements pertaining thereto and within the financial capability of the district, providing a program of protection and/or insurance against:

Loss, damage, or liability as mandated or permitted by the education, government, labor, insurance and other pertinent codes of the state of _____; to include, but not limited to, loss or damage to the real and personal property of the district, liability of the district and/or the personal liability of members of the governing board and employees of the district for damages to persons or property, including injury or death, losses due to employee dishonesty, worker's compensation liability, and the provision of a program of health and welfare benefits for employees to the limits established from time to time by the governing board.

Under the provisions of this policy, the superintendent shall develop and maintain rules and regulations necessary to implement and administer all aspects of this policy.

APPENDIX B

Rules and Regulations for Administration and Supervision of the District's Risk Management Program

1.0 Management and Control of _____ District's Risk Management Program.

1.1 Management and control of the District's Risk Management Program and any and all insurance authorized by the Governing Board shall be a function of the Business Division through such staff allocation of responsibilities as the _____, Business shall designate.

1.2 The _____ shall be the Risk Manager for the District.

1.3 The Risk Manager shall have authority to establish rules and procedures, consistent with Board policy, to insure the safety and well-being of pupils, employees and the public while on or in school district property. Such rules and procedures shall be designed to maintain the District's liability at a minimum and insurance premiums as low as possible consistent with insurance requirements and the exposures insured.

1.4 The latest available professional risk management techniques shall be utilized to identify, analyze and minimize risks inherent in the operation of District programs.

1.5 Risk considered to be unretainable shall be transferred. Such transference shall normally be through the purchase of insurance; however, the use of a "pooling" agreement is permissible if considered in the best interest of the District.

2.0 Program/Site Manager Responsibility

2.1 It shall be the responsibility of each Program/Site Manager to be constantly alert to the risks inherent in its operation and to make every effort to minimize such risks.

2.2 The Program/Site Manager shall educate employees concerning their responsibilities under the Risk Management Program and enlist their support in minimizing such risks.

2.2.1 Each employee shall be charged not only with operating in the safest manner possible, but with alerting others, especially management, to any possible hazard and to safer and/or better methods of operating.

- 2.3 Each Program/Site Manager shall be charged with the safekeeping of all assets charged to the program, and with the security of the facility which houses the program, unless that duty has been specifically charged to another person.
- 2.4 Program/Site Activities. Each Program/Site Manager shall be responsible for the following:
 - 2.4.1 Completion of questionnaires and survey forms on existing activities.
 - 2.4.2 Notification of new or proposed activities to the Risk Manager.
 - 2.4.3 Cooperation with the Risk Manager for on-site inspections and analyses of physical operations.
- 2.5 Program/Site Safety Committee
 - 2.5.1 Each Program/Site Manager shall form a safety committee which shall meet at least monthly to inspect facilities and equipment.
 - 2.5.2 Copies of safety committee reports shall be forwarded to the Risk Manager.
- 3.0 Placement of Insurance
 - 3.1 The Risk Manager shall make every effort to obtain insurance coverage at the most economical cost, consistent with required service, by obtaining quotations, by competitive bidding, or through negotiation, using whichever method is considered most advantageous to the District.
 - 3.2 The Risk Manager shall report insurance requirements, together with all relevant information including premium quotations, and recommendations for placing such insurance to the Superintendent, who shall present such recommendations to the Governing Board.
 - 3.3 Upon authorization by the Governing Board, the Risk Manager shall place such insurance in accordance with said authorization and the relevant provisions of these rules and regulations.
 - 3.4 In an emergency, the Risk Manager shall place insurance; and the Superintendent shall immediately report such placement for ratification by the Governing Board.
 - 3.5 The Risk Manager shall be responsible for maintaining continuous coverage of all insurance programs mandated by law or Board Policy.
- 4.0 Types of Exposures to be Protected Against

The following insurance shall be carried in accordance with applicable rules and regulations and/or such self-insurance program as the Governing Board may authorize:

 - 4.1 Fire and extended coverage insurance covering all buildings at replacement cost which are owned or occupied by the District, in such amounts as are authorized by the Governing Board.
 - 4.2 Comprehensive liability insurance or a self-funded program covering the District, members of the Governing Board, District officer and employees while acting in the discharge of their duties within the scope of their employment and/or under the directions of the Governing Board. Errors and Omissions coverage should be included in the comprehensive liability package or as a separate policy.
 - 4.3 Fidelity bonds protecting the District against loss occasioned by fraud or dishonesty of officers, employees and agents of the District.
 - 4.4 Worker's Compensation insurance or a self-funded program covering all em-

ployees and volunteers of the District, pursuant to the Labor Code of the State of _____ and sufficient to provide benefits as prescribed by law.

- 4.5 Casualty, fire, theft and extended coverage insurance on selected vehicles owned or operated by the District to the limits as specified by the Governing Board.
 - 4.6 Burglary and robbery insurance covering such monies and property as specified by Board action.
 - 4.7 Boiler and pressure vessel property damage insurance, covering boilers and such pressure vessels and property to such limits as authorized by the Governing Board.
 - 4.8 Sprinkler leakage insurance on property where designated by the Risk Manager and authorized by the Governing Board.
 - 4.9 Umbrella accident insurance for students participating in field trips and athletic events and who are not otherwise covered.
 - 4.10 Student accident insurance will be made available and the premium paid by the student's parent or guardian.
 - 4.11 Programs of insurance in the area of employee fringe benefits such as: hospital and medical insurance, dental insurance, life insurance, long-term disability insurance; but only in the kinds and to the limits authorized by the Governing Board.
 - 4.12 Such other insurance coverage as the Governing Board may authorize.
- 5.0 Insurable Value—Buildings and Contents
- 5.1 The insurable value of a building shall be defined as the replacement cost of such building less the non-insurable items set forth in the District's fire insurance forms.
 - 5.2 The term "contents," as used in connection with insurance, shall be defined to include all personal property not specifically excluded by the terms of the standard form for fire insurance policies.
- 6.0 Settlement of Losses
- 6.1 When any property covered by insurance is lost, damaged or destroyed, a notice concerning the loss shall be sent immediately to all affected carriers or their representatives. The Risk Manager shall act as adjuster for the Governing Board in the settlement of losses and shall sign the Proof of Loss as authorized. The Superintendent shall recommend to the Governing Board, as soon as practicable, a basis for settlement and, upon adoption by the Governing Board, the agreed amounts shall be collected from the insurance company(ies) and deposited to the credit of the District in accordance with procedures governing such collection.
- 7.0 Liability Claims Procedure
- 7.1 All Claims for Damages filed with the District pursuant to the Government Code of the State of _____ shall be referred to the appropriate insurance carrier or self-insurance administrator for recommendations regarding acceptance or rejection of the claim. Such recommendations shall be presented to the Governing Board for Approval. For all claims rejected by the Board, a written

notice of rejection shall be sent to the claimant. Such notice shall contain a warning advising the claimant of the statutes for filing court action pursuant to Section _____ of the Government Code of the State of _____.

APPENDIX C

Glossary

Adjuster. Person (or organization) who settles claims covered under an insurance contract. May be company or independent adjuster.

Admitted company. An insurance company licensed by the insurance department of a state to do business within that state.

Adverse selection. Situation (usually a deviation from insurance company procedures) which fails to produce a proper cross-section of risk.

Agent. A representative of an insurance company who has the authority to bind the company under certain situations.

All risk. A type of property and casualty policy which covers all perils except those specifically excluded.

Application. A statement of information made by a person applying for insurance.

Appreciation. The amount by which property has increased in value due to increased cost of construction or inflationary factors.

Assigned risk plan. In auto insurance, a plan for distributing higher risks among companies on the basis of premium volume written.

Bailee. The person who takes possession of goods for safekeeping, service or repair.

Binder. A memorandum from an insurance company confirming that coverage is in effect pending issuance of an insurance policy.

Blanket policy. A single contract which covers a number of locations or risks.

Broad form. An insurance contract covering additional perils as compared to a standard policy.

Broker. Represents the insured in negotiating coverage with insurance carriers. May also be an agent for one or more companies. The terms agent and broker may be interchangeable in some states.

Broker of record. A broker named by the insured as the exclusive representative of the insured in all negotiations with insurance carriers for that line of business.

Business interruption. Coverage against loss of business income from fire or allied risk.

Co-insurance. Also known as average clause or contribution clause, applies only when a loss occurs and results in a sharing of the loss between the carrier and the insured when the amount of insurance carried does not equal an established (in the insurance contract) percentage of the total value of the property insured.

Common law defense. Assumption of risk, contributory negligence, and the fellow servant rule were available defenses to employers when employees were injured prior to worker's compensation laws.

Comparative negligence. Laws which allow a judge and/or jury to decide upon the comparative degree of negligence between the plaintiff and defendant. Damage awards will be affected. Contributory negligence would not be a bar to recovery under such laws.

Commission. The amount paid by the insurance company to the agent or broker for producing the business. Usually established as a percentage of the premium, commissions vary according to the line of business and premium volume.

Concealment. The failure by the insured to disclose a material fact which might influence the carrier's acceptance of a risk. Intentional concealment may void the insurance contract.

Consequential loss. A loss not directly caused by the peril insured against but resulting from the insured peril.

Coverage. The type of protection provided by an insurance policy.

Deductible. The amount of the loss which the insured assumes toward a loss before the carrier becomes liable for its share.

Depreciation. The amount charged off each year to cover aging and obsolescence of property.

Deviation. The amount by which a rate differs from one published by a rating bureau.

Direct writing company. Insurance companies which sell insurance by means of their own sales force.

Discovery period. In fidelity bonds, the period following a theft during which the theft is discovered. The allowable period will vary with the type of bond.

Earned premium. The amount of premium covering the period during which the policy has already been in force.

Endorsement. A written attachment to a policy which adds coverage or modifies provisions of the original contract.

Estoppel. A legal restraint on a person to prevent him or her from contradicting his own previous assertion.

Excess insurance. A policy which provides coverage only after the limits of the basic policy (and other underlying policies) have been exhausted.

Experience. The claims history of a risk or insured.

Exclusions. Specific perils set forth as not covered under the policy. Standard exclusions are contained in the body of the policy. Manuscript exclusions are tailored to the specific risks of the insured.

Extended coverage. The most common endorsement added to a standard fire policy covering windstorm, hail, explosion, riot and civil commotion, smoke damage and damage from vehicles and aircraft.

Fidelity bond. Contract under which losses sustained by an employer, due to the dishonesty of a covered employee, are reimbursed as surety.

Financial responsibility law. Law which provides for the suspension of registration and/or drivers license if the owner or operator fails to furnish security or insurance coverage for any judgment arising from an accident.

Floater. A type of policy covering property of a portable nature.

Friendly fire. One lighted and contained in a usual place for fire and used for common purposes.

Group insurance. Coverage for a number of persons under a single contract, providing that the group is not formed specifically for the purpose of securing insurance.

Hazard. That which causes a peril to come to pass.

Hostile fire. An unexpected fire in a place not intended for the fire to be.

Hull coverage. Physical damage coverage for a marine vessel or an aircraft.

Indemnity. Compensation for the actual amount of damage, loss or hurt incurred under a property or casualty policy. Opposite of a valued contract.

Inland marine coverage. Insurance against property in transit on land.

Insurable interest. The amount which the insured would lose if a loss occurred for which there were no coverage. Insurance cannot be purchased unless the insured has an insurable interest.

Insurable risk. A risk having the characteristics which make it insurable. It must be: susceptible to the law of large numbers; the probable occurrence of loss must be uncertain; the loss must be significant; the cost of insuring the risk must be low compared to the coverage; and the risk must be determinable.

Insurable value. The present worth of the property to be insured considering depreciation, exclusions, etc.

Insurance. A business or system whereby indemnity is guaranteed by one party to another, for consideration (premium), to cover certain contingencies and upon specified terms.

Insuring agreement. That part of an insurance contract which covers the agreement to protect the insured against loss from specified perils, or to pay benefits under specific circumstances.

Intentional tort. The person committing the act intends to do what he does, e.g., assault, battery. See tort.

Larceny. The felonious taking and carrying away of goods of another with intent to convert it to the taker's use.

Liability insurance. Coverage against the hazard of the possibility that the insured may be held liable in a court of law, or by an administrative body, to pay damages to another person for injury to that person, his property, or other interests.

Limit of liability. The maximum amount which the insurance company is obligated to pay under the coverage.

Lloyds of London. A group of underwriters making contracts of insurance. Each underwriter (individual or group) is liable for the portion of the risk to which he subscribes.

Loss ratio. A percentage factor derived by dividing the dollar amount of losses by the premium. Also called pure loss ratio, if expenses of operation are not included with losses.

Malpractice insurance. Liability coverage against legal liability on account of improper or negligent treatment or procedures by the insured.

Manual rating. Standard risks are charged rates contained in a manual of rates. See deviation for rates which differ from manual.

Master policy. One in which all general conditions are set forth, and under which certificates referring to the master policy and describing the particular transaction are sent to individual insureds.

McCarran-Ferguson Act (Public Law 15). Federal law which stipulates that regulation of the business of insurance shall remain under state control except where Congress has enacted specific legislation.

Merit rating. Rate reduction from established rates for a particular class based upon good loss experience for an individual policyholder. Usually available only at renewal.

Misrepresentation. A statement of fact by the insured which is untrue and which the insured knows to be untrue and with an intent to deceive. Material misrepresentation is a ground for voiding an insurance policy.

Mutual assent. A necessary element to an insurance contract. Usually characterized by an offer and acceptance between two parties.

Negligence. The failure to act as a reasonable and prudent person would under the particular set of circumstances.

Policy. A written agreement or contract to insure certain enumerated risks.

Premium. The consideration charged by an insurance company for a given policy.

Products liability. The liability associated with damages resulting from some product manufactured and/or sold.

Proof of loss. A formal statement itemizing the details of a loss which the insured or his agent submits to the carrier.

Pro-rata cancellation. Provides for the return of the entire unearned premium corresponding to the balance of the contract period without the penalty associated with short rate cancellation.

Rate. The amount charged for each unit of exposure for a given period, usually one year and generally per \$100 of coverage.

Replacement insurance. Provides for reimbursement based upon like kind and quality without deduction for depreciation.

Replacement value. The cost of replacing lost or destroyed property with like kind and quality.

Reporting policy. The insured is required to report values at risk at periodic, established intervals (annual, quarterly, monthly, etc.). Premiums are based upon actual exposures rather than estimated exposures.

Representation. An oral or written statement by the insured to the insurer, prior to the completion of the contract, relating to the risk to be insured.

Reserve. The sum set aside to cover the expected amount of the loss.

Risk. The danger or hazard of loss of the insured property, usually calculated as a percentage.

Robbery. The felonious taking of personal property against the will of the victim by means of force or fear.

Retention. 1) The amount of coverage retained by a carrier after the placement of reinsurance. 2) In employee benefit coverages, the portion of the premium charged for overhead and profit as opposed to claims payments and reserves.

Rider. An attachment to a policy adding coverage.

Salvage. 1) In bonds, the amount recovered from the employee who is the subject of a fidelity bond. 2) The value of property remaining after damage by a fire or other loss.

Stock company. An insurance company in which the initial capital investment is by the sale of stock, and is thereafter managed as any other publicly owned corporation.

Short rate cancellation. When a policy is cancelled unilaterally by the insured, a penalty is generally extracted by the carrier rather than return the full unearned premium. The penalty may range up to 11% of the unearned premium.

Strict liability. Liability without the necessity of establishing that the defendant is at fault. Often associated with dangerous materials.

Subrogation. The right of the insurer to recover from a third party any sums paid on a loss where the third party is judged to be at fault.

Surety. In bonds, the person or company which makes good the promise of the principle to the obligee.

Surety bond. A contract under which a person (surety) agrees to perform on behalf of the principal that which was promised to the obligee.

Tort. A wrongful act, damage or injury done willfully, negligently or in circumstances involving strict liability, for which a civil suit can be brought.

Unearned premium. The portion of advance premiums represented by the unexpired portion of the policy period.

Valued contract. An insurance contract which pays the insured, or beneficiary, a certain amount without regard to actual loss. Life insurance would be an example. Opposite of indemnity contract.

Waiver. The voluntary and intentional relinquishment of a known right or privilege or conduct to warrant such an inference.

Warranty. A part of an insurance contract which relates to the risk insured against, in contrast to a representation which is made prior to completion of the policy.

Worker's compensation. Statutes setting forth the strict liability of employers for the injuries to employees while at work.

APPENDIX D

Awards For Damages

Special Damages

Usually out of pocket expenses incurred by the plaintiff, such as medical bills, loss of earnings, property repairs, and legal fees.

General Damages

May be allowed for those losses which are not directly measurable, such as pain and suffering.

Punitive Damages

May be allowed where the conduct of the defendant is grossly negligent, reckless, and done without regard to life or property.